THE INTERESTS OF LAND-LOCKED STATES IN LAW OF THE SEAS

I. INTRODUCTION

Approximately one fifth of the nations of the world are land-locked, having no direct access to the sea within the bounds of their territorial jurisdiction.[1] These nations, throughout modern history, have sought to secure for themselves various rights that the coastal nations inherently have due to geographical location. The traditional demand of the inland countries has been that of unrestrained access to the sea, but now, with the significant strides that oceanic sciences have made in the last two decades, their demands have spread into other areas that once held little interest to inland countries.

It has become apparent in recent years that the resources of the sea are going to play an ever-increasing part in the economic picture of the world. Where the sea was once looked upon as a source of animal and plant products, it will now be expected to supply a growing population with a variety of mineral and hydrocarbon resources as well. Although the feasibility of extracting specific minerals may be in doubt for the present, there seems to be little contention that in the near future, mineral extraction will proceed and the harvests will be quite substantial.[2]

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1. Botswana, Burundi, Central African Republic, Chad, Lesotho, Malawi, Mali, Niger, Rhodesia, Rwanda, Swaziland, Uganda, Upper Volta and Zambia (Africa); Afghanistan, Bhutan (U.N. Member, Sept. 21, 1971), Laos, Mongolia, Nepal (Asia); Austria, Byelorussian S.S.R., Czechoslovakia, Hungary, Liechtenstein, Luxembourg, San Marino, and Switzerland (Europe); Bolivia and Paraguay (South America). All of the above nations are either members of the United Nations or of some specialized agency of the United Nations. UNION OF INTERNATIONAL ASSOCIATIONS, 21 YEARBOOK OF INTERNATIONAL ORGANIZATIONS at 17-21 (12th ed. 1969). Other states that might be included are Sikkim and Tibet (Asia); Andorra and State of Vatican City (Europe).

2. *See* Schaefer, *The Resources of the Seabed and Prospective Rates of Development as a Basis of Planning for International Management* in THE LAW OF THE SEA: THE UNITED NATIONS AND OCEAN MANAGEMENT 71 (Proceedings of the Fifth Annual Conference of the Law of the Sea Institute, 1970).

The land-locked states have a great interest in the results of any massive harvest of ocean resources. Many of their interests are shared with coastal states; some are unique. While all mineral exporting nations may suffer from a price slump at the international market place, only the inland countries carry the burden of overland transportation costs. The flood of resources from the sea would be that much more severe on the inland states. Likewise, while most coastal nations could expect at least some return from the minerals of their shores, the inland countries would receive nothing.

Because land-locked states suffer the same population problems that others do, a new interest in the sea as a source of protein has developed. Indeed, many land-locked nations have developed extensive markets within their borders for fish and fish products. This has fostered a desire by these countries to see that proper conservation techniques are adhered to so that their source is preserved and the product price remains minimal.

These factors have led the inland countries to voice a greater concern as to the state of the world oceans. The demand for participation by these nations has been voiced in the General Assembly of the United Nations; and it is evident, both by General Assembly resolutions reserving the sea bed for mankind[3] and by resolutions aimed specifically at the interests of the inland states,[4] that these demands have been heard. The year 1973 will offer the opportunity many of the inland states, along with other smaller and underdeveloped coastal states, have sought in order to express their demands and to make these assertions a part of the international law. In 1973 a United Nations conference on the law of the seas has been scheduled.[5] It is also, very likely, the last year in which a uniform plan of regulation, embodying all of the varied interests that the under-developed nations have, can be drawn up and enacted before oceanic technology advances to such an extent that the authority these nations could have wielded will have been usurped. A comprehensive body of work resulting from this conference, including more than mere token recognition of the problems, would be more preferable than the patchwork and kaleidoscopic revisions which would surely be the result if the interests of the land-locked

3. G.A. Res. 2340 (XXII) (1967), 7 INT'L LEGAL MATERIALS 174 (1968); G.A. Res. 2467 A-D (XXIII) (1968), 8 INT'L LEGAL MATERIALS 201 (1969); G.A. Res. 2574 A-D (XXIV) (1969), 9 INT'L LEGAL MATERIALS 419 (1970).

4. G.A. Res. 2750 C (XXV) (1970), 10 INT'L LEGAL MATERIALS 226 (1971). The resolution was adopted by 108 to 7, with 5 abstentions. The Soviet bloc voted against the resolution.

5. G.A. Res. 2750 A-D (XXV) (1970), 10 INT'L LEGAL MATERIALS 224 (1971).

countries are not adequately expressed and adamantly contended. The impact resulting from the development of marine resources cannot be accurately measured at such an early date, yet some generalizations may be made and some obvious consequences pointed out with respect to the long-term effects.

II. Access

Perhaps the most evident disadvantage the inland countries suffer is the absence of a seaport. The availability of a seaport, of course, has a total effect on the economy of any country. Regardless of the immediate returns of the sea, such as plant, animal, and mineral goods, the sea offers an avenue for trade development with the rest of the world that cannot be matched by overland routes. Not only does the sea offer the cheapest mode of transportation, but in many instances it offers the only way in which international markets can be reached. For this reason, those nations with direct oceanic access find the resource an absolute necessity, while those without have strived to attain this franchise from neighboring coastal nations.[6]

Legal justification for the right of access has traditionally been based on such concepts as natural law, servitudes of necessity, and the freedom of the high seas.[7] The establishment of legal philosophies to justify the position of inland states had little effect on those nations that would have to grant the rights sought, so the problem was solved by bilateral treaties between the individual nations.[8] Bilateral treaties, however, often have distinct disadvantages to the land-locked states. The price a land-locked nation would have to pay to bring about such transit treaties was very high when com-

6. Virtually every land-locked state has only one state between itself and oceanic access.

7. D. BOWETT, THE LAW OF THE SEA 50 (1967) (hereinafter cited as BOWETT). *But see* Johnson, *The Preparation of the 1958 Geneva Conference on the Law of the Sea*, 8 INT'L AND COMP. L. Q. 122, 139 (1959) ("By no stretch of the imagination can the question of overland transit be brought within the regime of the sea.").

8. *Id., see, e.g.*, Convention of Mannheim, *done* Oct. 17, 1968, 20 Recueil de Traites 355 (1875); Treaty of Commerce and Fluvial Navigation Between Brazil and Bolivia, *done* Aug. 12, 1910, 7 Recueil de Traites (ser. 3) 632 (1913). *See generally* J. MOORE, 1 A DIGEST OF INTERNATIONAL LAW § 131 at 627-53 (1906); Borel, *Freedom of Navigation on the Rhine*, in THE BRITISH YEAR BOOK OF INTERNATIONAL LAW 1921-22 at 75; G. HACKWORTH, 1 DIGEST OF INTERNATIONAL LAW §§ 87-89 at 596-613 (Dep't of State, 1940).

pared to the minor cost suffered by the coastal nation, which was merely allowing the use of an inexhaustable natural resource. No matter how strong the wording of the treaty, the land-locked state would remain dependent to some extent upon the coastal state through which it traversed.

Economic Necessity

It is, then, no surprise that in this age of world powers, world economics, and world politics, inland countries are seeking to secure broader and stronger rights in this respect than could be offered by the bilateral treaty. Many of the inland countries are as yet under-developed. To these countries, reaching world markets is a necessity upon which any future development hinges. The delays and added costs suffered by inland countries can operate to defeat any proposed investment, especially if the return expected is somewhat marginal in the first place. Although most products, in any country, must travel at least some distance to a port of departure, the land-locked countries have no control over the land-transport facilities of the neighboring coastal nations and must therefore accept these as the only mode of transportation available. The effect of this situation can be demonstrated by events in the Central African Republic. There, substantial uranium deposits were discovered and thought to be of profitable quality. However, because the uranium ore would have had to be carried one thousand kilometers to the port of Dovela, Cameroon, the cost of transportation became a distinct disadvantage to the prospective investors (Japanese) and an otherwise profitable investment must now be considered marginal at best.[9]

Problems associated with access can be considerably lessened by the presence of rivers on which sea-going vessels can traverse. Hence, Paraguay can reach the outside world through the Parana River and its many and large tributaries.[10] Switzerland is in a similarly advantageous position. It maintains a merchant marine on the Rhine,[11] and more than one-fourth of its foreign trade passes through its home port, Basel. Other countries among the inland states also have direct access to the sea via navigable rivers, but

9. 67 MINERAL TRADE NOTES (No. 6) 27-28 (U.S. Dep't Interior, 1970).
10. Principally the Paraguay and Pilcomayo rivers. *See generally* Brown, *Transport and Economic Integration of South America,* 8 DEVELOPMENT DIGEST (No. 1) 3, 7-11 (1970).
11. 1 THE EUROPA YEARBOOK 1155 (1971). *See* THE WORLDS MERCHANT FLEET, *infra* note 42; R. BAXTER, THE LAW OF INTERNATIONAL WATERWAYS 17-18. *See also* C. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA § 312 at 294 (6th ed. 1967) (hereinafter cited as COLOMBOS).

such cases are exceptions rather than the rule among this group. For example, although countries may have abundant water resources and many large rivers, ocean access may be made impossible by the treacherous rapids that abound among these rivers. It is also not uncommon to find countries with riparian resources suffering a disadvantage because of the shallowness of their waterways, thereby limiting navigation only to vessels of limited capacity, resulting in the loss of quantity exports. This, of course, severely limits traffic and nearly eliminates any chance of continual and low-cost transportation modes between these countries and outside markets.

African land-locked states have much the same problem. While Africa has six large rivers,[12] many land-locked states are cut off from direct ocean traffic by intraversable rapids.[13] Furthermore, many of Africa's rivers never reach the sea at all due to the extreme dryness that is characteristic of so much of the continent.

The problem of access is not merely one of transportation costs and economics. Reaching world markets can become a decidedly easy objective when compared to the difficulties that can arise when goods are imported into the inland countries. Besides the basic transportation costs that have to be paid to the coastal nations, there are administrative costs, customs, possible legal conflicts, and political necessities which must be considered.[14] An extreme example of the hardships a land-locked country must suffer when its transit rights are divested may be demonstrated by the problems faced by Zambia upon Rhodesia's bid for independence[15] and the subsequent United Nations economic sanctions. The country found itself with absolutely no petroleum at hand; the total supply of fuel had to be air-lifted in, resulting in staggering costs and a perpetual shortage.

To the coastal state, restrictions placed upon the importation of goods must seem logical indeed. Not only are such restrictions a

12. Nile, Congo, Niger, Zambezi, Orange and Limpopo.

13. The Nile, the longest river on earth, has only one thousand miles of navigable water over its entire four thousand mile length. To some extent, this is characteristic of all the large African rivers.

14. Makil, *Transit Rights of Land-locked Countries*, 4 J. WORLD TRADE LAW 35 (1970) (hereinafter cited as Makil).

15. MacDonald, *Economic Sanctions in the International System*, 7 CANADIAN YEARBOOK INT'L LAW 61 (1969); 21 YEARBOOK OF THE UNITED NATIONS 125-158 (1969). *See* INT'L L. STUDIES 1963 (U.S. Naval War College) at 317-415.

possible source of revenue, but they can also serve the economic and political needs of a country. As it would be absurd to allow political enemies in an inland country to obtain weapons to be used against the littoral state, it must also seem equally absurd to allow a potential economic competitor to obtain a foot-hold in the world market. Such concerns were very real on the African continent at one time, although there is evidence that for the time being, attempts are being made to pacify these fears of economic (and military) superiority.[16]

Unification and Conventions

The vocalization of demands has increased in the last two decades.[17] If the countries of inland status are not as yet unified into a working group, there is at least evidence that the demands asserted are common to the majority of these nations. Hence, recently in the United Nations General Assembly the representatives of Afghanistan,[18] Austria,[19] Bolivia,[20] Burundi, Chad, Lesotho, Mali, Niger, Paraguay, Swaziland, Upper Volta, and Zambia demanded that the United Nations take an active role in seeing that the rights of land-locked nations are finalized and respected.[21] Transit rights, at least to some extent, have been given further substance by the International Court. Cases have held that the historical exercise of transit rights can establish a legal status quo.[22] While of doubtful international consequence, the cases are, perhaps, philosophical victories.

Modern attempts to formalize the rules of transit by inland countries generally find their basis in the Convention on the Free-

16. *See* Matthews, *Interstate Conflicts in Africa: A Review*, 24 INT'L ORGANIZATION 335 (1970) for an excellent synopsis of the problems.

17. *See, e.g.*, The Convention on Transit Trade of Land-locked Countries, note 27, *infra*. *See generally* Friedheim, *Factor Analysis as a Tool in Studying the Law of the Sea*, in THE LAW OF THE SEA 47, 67 (L. Alexander ed. 1967).

18. *See* 8 U.N. MONTHLY CHRON. (No. 4) 25 (1971).

19. *Id.*

20. *See* 8 U.N. MONTHLY CHRON. (No. 1) 40 (1971).

21. *Id.* at 39.

22. Right of Passage over Indian Territory [1960] I.C.J. 42. Portugal claimed the right to traverse through Indian territory so that it could remain in constant contact with two Portuguese enclaves: Dadra and Nagar-Aveli. The basic right of passage was based upon a treaty dating back approximately one hundred and seventy years. Although India successfully repudiated the effectiveness of the treaty, the Portuguese right of transit was affirmed by the court, over the Indian objections, because of the continual usage over the extended period of time. The court's decision, however, was such that only non-military goods and personnel could traverse through Indian territory. *See* E. HAMBRO, THE CASE LAW OF THE INTERNATIONAL COURT 1959-1963 at § 185 (1966).

dom of Transit, established in Barcelona in 1921.[23] Although somewhat limited in authority and scope, perhaps due to the methods of transportation in 1921, the Barcelona Convention did lay the ground work for later international agreements of comparatively greater importance.[24] Of these later attempts at codification, the General Agreement on Tariffs and Trade[25] (GATT), the Convention on the High Seas (1958),[26] and the Convention on Transit Trade of Land-locked Countries[27] are the foremost examples of substantive provisions in the area and therefore should be treated separately.

GATT

The GATT is not directed specifically at the interests of the landlocked nations, but nevertheless does contribute to the facilitation of their demands. Article V of the GATT[28] is particularly impor-

23. 7 L.N.T.S. 12, *done* April 20, 1921. *See* Toulmin, *The Barcelona Conference on Communications and Transit and the Danube Statute*, in THE BRITISH YEAR BOOK OF INTERNATIONAL LAW 1922-23, at 167; G. HACKWORTH, 4 DIGEST OF INTERNATIONAL LAW § 363 at 345-46, 355 (Dep't of State, 1942); BOWETT, *supra* note 6 at 50. *See also* The Right to a Flag Having no Sea Coast, 7 L.N.T.S. 74, *done* April 20, 1921; LEAGUE OF NATIONS COVENANT Art. 23, para. (e) (facilitation of trade and commerce); COLOMBOS, *supra* note 11 § 246 at 239.

24. *See* Makil, *supra* note 14, at 36.

25. The General Agreement on Tariffs and Trade, 61 Stat. pts. 5-6, T.I.A.S. No. 1700, 55-61 U.N.T.S. (hereinafter cited as GATT). The General Agreement on Tariff and Trade, with annexes, was not signed as a separate document. It is attached to the Final Act of the United Nations Conference on Trade and Employment, signed at Geneva Oct. 30, 1947. There are more than eighty contracting parties. TREATIES IN FORCE 310 (Dep't of State, 1972).

26. The Convention on the High Seas; [1962] pt. 2 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82. *Done* at Geneva April 29, 1958; *entered into force* for the United States September 30, 1962. Approximately forty-nine states are parties to the Convention. TREATIES IN FORCE 332 (Dep't of State, 1972).

27. The Convention on Transit Trade of Land-locked Countries; [1965] pt. 5 U.S.T. 7383; T.I.A.S. 6592; 597 U.N.T.S. 42. *Done* at New York July 8, 1965, *entered into force* for the United States Nov. 28, 1968. As of January, 1972, twenty-four parties had signed the Convention. TREATIES IN FORCE 384 (Dep't of State, 1972). U.N. Doc. TD/Transit/9: 9 INT'L LEGAL MATERIALS 957 (1965).

28. Article V provides:

> 1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without transhipment, warehousing, break-

tant in that the article covers international transit in general and therefore, at least by implication, encompasses the problems faced by so many of the land-locked states. In this respect, the GATT becomes an important instrument of international law to these states and is consequently worthy of some consideration.

Paragraph two of Article V provides that each contracting party shall allow the goods of another contracting party to pass through its borders unhindered, regardless of the origin, destination, or factors relating to ownership of the goods in question. In addition, the paragraph states that the flag of transport vessels shall be irrelevant in the considerations of any nation as to the passage of

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ing bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or other means of transport.
3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for the entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.
7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

goods. Paragraph two and its seemingly generous provisions are somewhat mitigated by paragraphs three, four and five. Paragraph three, while ostensibly removing transit charges, is written in language so nebulous that an agreement as to what is actually meant would seem almost impossible. Unjustified restrictions and delays are condemned, yet administrative expenses and service charges are allowed. Furthermore, a contracting party may require that goods in transit be entered at customs, thereby reducing any practical benefits that might have otherwise accrued to inland nations. The fact that the goods may be required to enter customs immediately implies that a coastal nation may still retain control over the exports and imports of an inland neighbor. Paragraphs four and five do little to ameliorate this interpretation. The former stipulates that regulations and charges shall be reasonable and commensurate with traffic conditions. The latter states that traffic in transit to or from one country shall be accorded treatment equal to that granted any other country. As to paragraph four, it is readily apparent that customs and administration costs can be construed as traffic conditions. Paragraph five has no applicability in that it grants no rights in respect to the unimpeded flow of goods to and from a land-locked country; it merely equalizes the burdens among the states.

Although Article V is seemingly broad enough, it leaves certain aspects of the transit rights which it purports to regulate in doubt. While paragraphs one and two appear to give uncontestable rights to the contracting parties, it is obvious that paragraph three does in fact limit the effectiveness of the argument. Not only are the "applicable" custom laws determined by the state over which transit is sought, but, furthermore, there is no provision which prevents "administrative" expenses from becoming a hidden tax. The final result of the GATT Article V provisions, then, seems to be that the inland contracting parties may export goods, somewhat easier than otherwise, through the territory of contracting coastal states, but problems as to the importation of goods still remain because of the vagueness of paragraph three.

1958 Convention on the High Seas

The 1958 Convention on the High Seas provides perhaps the most important concessions yet achieved by the land-locked countries.

Articles 2, 3 and 4 relate directly to the interests of the inland countries, and, being a part of what might be termed a major international agreement, lay forth rules that can be easily utilized as a basis for subsequent annexations. The major weakness in the articles lies in their vagueness as to what rights are actually vested in the inland contracting parties. That is to say, while the intent seems clear enough in the composition of the articles, there appears to be no basis of authority inherent in the articles themselves. Consequently, the inland countries suffer because the most controversial aspects of the Convention are usurped by the cursory treatment given.

Of the three articles mentioned, Article 3 carries the greatest impact with respect to the demands of the land-locked countries. Article 2[29] is an introduction to the subject in general, declaring that the high seas are an international matter in scope and not subject to the sovereignty of any one nation. Article 4, which shall be discussed later, purports to give land-locked countries the right to sail under a flag of national origin. Article 3 is as follows:

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no seacoast should have free access to the sea. To this end States situated between the sea and a State having no seacoast shall by common agreement with the latter and in conformity with existing international conventions accord:
   (a) To the State having no seacoast, on a basis of reciprocity, free transit through their territory and
   (b) To ships flying the flag of that state treatment equal to that accorded to their own ships, or to the ships of any other states, as regards access to seaports and the use of such ports.
2. States situated between the sea and a State having no seacoast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no seacoast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

29. Article 2 provides:
The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal states:
(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.
These freedoms, and others which are recognized by the general principles of international law shall be exercised by all states with reasonable regard to the interest of other states in their exercise of the freedom of the high seas.

Paragraph one of Article 3 outwardly appears to be very important to the land-locked nations in that it purports to grant free access to the sea to those countries lacking coasts. However, the franchise is severely limited by the qualifying phraseology which makes common agreement a necessity precedent to any exercise. Of course, it would seem only just that the coastal nations be allowed to preserve their national interests, but the need for common agreement, as expressed here, implies that while the international convention recognizes the right of transit—and even the necessity—no provision will be made to guarantee or facilitate the establishment of such a right between the contracting parties. The use of the word "should" in paragraph one exemplifies the reluctance, on the part of the international community, to take a firm position on this matter.

This interpretation is made even more evident by paragraph two which seems to invalidate completely the effectiveness of paragraph one. Indeed, there seems little purpose in including Article 2 at all if the sole effect is to grant only those rights which were already obtained by previous agreements and conventions, or those rights which are readily obtainable in the future. This has led some writers to feel that the inclusion of Article 3 in the Convention on the High Seas serves for little more than a moral victory.[30] Others have speculated that the practical consequences of the Convention, in respect to the land-locked countries, are so minimal as to give the coastal nations the power to exclude any person or resource that they so desire.[31]

Conclusions such as these may be perfectly justified, but a moral victory, even if of no practical consequence, is far better for the interests of the inland countries than the complete absence of consideration by the Convention. As William T. Burke implies, all international agreements, whether they be bilateral or multilateral, have the effect of softening the impact of their inclusion into subsequent international law in a more relevant form; and they therefore serve to expand the international law in the long run by downplaying national interests.[32] The inclusion of Article 3 will necessi-

30. BOWETT, *supra* note 7, at 51.
31. M. MCDOUGAL & W. BURKE, THE PUBLIC ORDER OF THE OCEANS 65-66 (1962).
32. W. BURKE, MARINE SCIENCE RESEARCH AND INTERNATIONAL LAW 18 (Law of the Sea Institute, Occasional Paper No. 8, 1970). *Cf.* Vienna Con-

tate research on the problem in future conventions, and consequently lay open the ground work for concessions of an even broader nature.

The Convention on Transit Trade of Land-locked Countries

The importance of the Convention on Transit Trade of Land-locked Countries is two-fold. First, it is an attempt to establish a framework in international law that grants not merely the rights associated with access, but further, a method whereby those rights can be enforced against the contracting parties. Secondly, the convention was drawn up by many nations who were either not represented at the formulation of the 1958 Convention on the High Seas or who were not yet in existence. There is no doubt that the more representative participation by inland countries contributed to the strengthening of demands.

The Convention on Transit Trade is made up of twenty-three articles, of which sixteen are substantive. The basis of the Convention on Transit Trade is Article 2. Provisions are made there for freedom in transit that go far beyond those of previous conventions, both in degree and in scope. Article 2 provides:

> Article 2
>
> *Freedom of Transit*
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> 1. Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned. Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used.
>
> 2. The rules governing the use of means of transport, when they pass across part or the whole of the territory of another Contracting State, shall be established by common agreement among the Contracting States concerned, with due regard to the multilateral international conventions to which these States are parties.
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> 3. Each Contracting State shall authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit.
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> 4. The Contracting States shall permit the passage of traffic in transit across their territorial waters in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

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vention on the Law of Treaties Art. 30; *opened for signature* May 23, 1969, U.N. Doc. A/Conf.39/27; 8 INT'L LEGAL MATERIALS 679, 691 (1969) (The application of successive treaties relating to the same subject matter)

Although paragraph two calls for common agreement between the contracting parties with respect to the means of transportation, other articles set forth the principles under which these common agreements must be made. Article 4 states that the contracting nations attempt to establish adequate transport facilities at points of entry and exit so that the flow of goods can pass unhindered and without unnecessary delay. Furthermore, Article 3 and Article 5 provide that traffic in transit not be subject to any special customs, dues, or taxes, with special provisions to ensure that administrative expenses do not end up serving this purpose, a very real threat under the GATT.[33]

Most interesting are those sections governing the obligations of the coastal states to the traffic in transit as to difficulties that may occur during the process of travel. Even though the coastal nations are not bound to allow such ". . . goods of a kind of which the importation is prohibited, either on grounds of public morals, public health or security, or as a precaution against disease of animals or plants or against pests,"[34] they are obligated to provide storage facilities at least equal to their own,[35] to avoid delay in transit,[36] and to protect both the safety of the goods and the route.[37] Except in emergencies[38] or in time of war,[39] the littoral states are obligated to cooperate towards the removal of any impediment or obstruction to the free flow of goods.[40] Should the parties fail to reach an agreement, under Article 16, a commission would be appointed to arbitrate the matter upon the request of either state. The commission would be composed of one representative from each of the disputing nations and a third member, to be made chairman, who is agreeable to both parties. The resolution of the dispute would be determined by a majority vote.

Article 16 is significant because it guarantees the rights of the land-locked states in a way that neither the GATT nor the 1958

33. GATT, *supra* note 28, Art. V., para. 3. *See generally* Hudec, *The GATT Legal System: A Diplomat's Jurisprudence*, 4 J. WORLD TRADE L. 615 (1970).
34. The Convention on Transit Trade of Land-locked Countries, *supra* note 27, Art. 11, para. 1.
35. *Id.*, Art. 6, para. 1.
36. *Id.*, Art. 7, para. 1.
37. *Id.*, Art. 11, para. 2.
38. *Id.*, Art. 12.
39. *Id.*, Art. 13.
40. *Id.*, Art. 7, para. 2.

Convention on the High Seas could. Both of these latter agreements suffer from vagueness, and hence rights can never be properly delineated. Of course, the problem of the Convention on Transit Trade of Land-locked Countries centers around those very clauses that give it strength; that is to say that there are reservations by the coastal nations as to signing an instrument that may eventually go against their national interests. Very likely, the instrument will be used as a basis for the demands put forward at the 1973 United Nations Conference on the Law of the Seas. It is safe to say that the inland countries, with the added votes due to their greater participation, will try to embody at least some of the articles set forth here in a document of greater international appeal. The Convention on Transit Trade of Land-locked Countries is a highly selective agreement; it appeals, in the main, only to those countries which have the need for broader transit rights, that is the inland states, and especially the under-developed inland states, who often derive their income from volume sales. It is then a necessity that these principles be eventually embodied in an instrument of major international significance.

The Right to a Flag

The demand for access is often accompanied by a collateral request for the right, by land-locked nations, to sail under the auspices of their own national flag. This demand was conceded to in the 1958 Convention on the High Seas, where Articles 4 and 5 state:

> Article 4
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> Every State, whether coastal or not, has the right to sail ships under its flag on the high seas.
>
> Article 5
>
> 1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
> 2. Each State shall issue to ships which it has granted the right to fly its flag documents to that effect.

This position is presented even more adamantly in the Convention on Transit Trade of Land-locked Countries, where one of the principles upon which the agreement is based is as follows:

> Principle II
>
> In territorial and on internal waters, vessels flying the flag of land-locked countries should have identical rights and enjoy treatment identical to that enjoyed by vessels flying the flag of coastal States other than the territorial State.

The value of this right, in the present, is somewhat debatable, for while it may seem justifiable as a philosophical or legal principle, as a practical matter it offers very few immediate benefits to most of the land-locked countries that would choose to exercise the franchise. Not only would the expense associated with the application be astronomical to the novice sea-going power, but the practicalities of operation would be formidable. Because of the need for port facilities, a land-locked nation would always be, to some extent, dependent upon the coastal states. Of course, the degree of dependency can vary between the inland states. Those nations having access to the sea by water-ways which permit the passage of ocean-going vessels, such as Switzerland and Paraguay, are in an advantageous position when compared with those states that depend totally upon overland access. Also, most inland countries could not possibly police their vessels as Article 5, paragraph one, of the Convention on the High Seas implies.[41] Further, most sailors and skilled seamen are native to the coastal states, therefore at least reducing what foreign exchange profits might be gained.

These obstacles, though, have not completely dissuaded inland nations from taking to the seas. Hence Switzerland carried much of its commerce from 1923 to World War II on charter ships.[42] Other nations have occasionally gone even further. For a few years, until 1961, Uganda and Kenya shared a sea-going navy, giving Uganda a rare distinction among inland states.[43] Nevertheless, there are much easier methods of obtaining the benefits of international commercial vessels than by operating them under one's own flag. Corporations and consortiums chartered in a foreign country may solve many of the problems associated with sailing under one's own flag. So does the registering of a vessel under the flag of a country whose regulations in this area are particularly lax.[44]

41. H. MEYERS, THE NATIONALITY OF SHIPS 290 (1967). *See* comments made during the initial formulation of the 1958 Convention on the High Seas, *supra* note 26, reported in 2 Y.B. INT'L L. COMM'N 37 *passim*.

42. MEYERS, *supra* note 41 at 291. As of 1969, Burundi, Czechoslovakia, Hungary and Switzerland had oceangoing merchant ships registered under their flag. THE WORLDS MERCHANT FLEETS (U.S. Dep't of Commerce, Maritime Administration) at 113-14 (1969); MARAD 1969: YEAR OF CHALLENGE—THE ANNUAL REPORT OF THE MARITIME ADMINISTRATION (Dep't of Commerce, Maritime Administration) App. II (June, 1969).

43. Nye, *East African Economic Integration* in INTERNATIONAL POLITICAL COMMUNITIES 429 (1969).

44. Note, *The American Merchant Marine: Flags of Convenience and*

Future events may give the right more significance. It is unlikely that we can expect a sizeable sea-going navy originating from an inland country, but of course interests are centered in the commercial sphere rather than the military. The sea offers opportunitites just as great for the inland countries as for the coastal states. There is little doubt that in the foreseeable future at least some of the inland states will desire to directly participate in these advantages on a basis equal to that of other nations.

Possibilities

The inland states, as a group, control approximately twenty percent of the votes in the General Assembly. This is quite a substantial number, but considering the esoteric nature of the inland states' demands, resistance must be expected. The question still remains as to what amount of leverage these inland states can exercise, in order that their interests be embodied in an international agreement to the maximum degree. As a practical consideration, the majority of these nations have very little economic leverage through which they could force concessions from allied or neighboring coastal states. Indeed, of the land-locked members of the GATT, only four nations are attributed a percentage of world trade that is above the absolute minimum assumed to transpire.[45] Furthermore, these four are European (Austria, Czechoslovakia, Luxembourg, and Switzerland) and hence are removed from the have-not states of Africa, Asia, and South America. Within the latter continents, it is far more likely to find the land-locked countries economically dependent upon their neighbors. Hence we find Uganda economically dependent on Kenya; Swaziland on South Africa; Mongolia on Russia; and so on. Obviously, this economic dependence tends to minimize the pressure that the land-locked states can exert in the furtherance of their oceanic interests. It is the very dependence from which these countries seek to escape that binds them to a less militant stance. Note that the availability of ocean transport to the coastal nations results in the existence of alternate sources of minerals; this in itself operates as a method by which any inland militancy can be toned down. No doubt, many coastal states will consider it cheaper to pay the added transportation costs for materials that originate from over-seas sources than to grant oceanic access to a non-allied, but neighboring, inland state.

International Law, 3 VIRG. J. INT'L L. 121-24; 127-36 (1963). *Cf.* H.B. JACOBINI, INTERNATIONAL LAW 121-23 (rev. ed. 1968); COLOMBOS, *supra* note 11, § 309 at 290.

45. *Hearings on Tariff and Trade Proposals Before the House Comm. on Ways and Means*, 91st Cong., 2d Sess., pt. 1, at 172-73 (1970).

There are also political considerations. While many inland countries may desire to obtain rights associated with the sea, it cannot be expected that they will foresake allies or over-bearing political powers. Hence, while Czechoslovakia and Hungary could compete profitably in world markets, they would do so at the threat of offending Russia. In fact, it can be expected that if Russia actively seeks to prevent the formulation of an international regime, Czechslovakia, Byelorussian SSR, Hungary, and possibly Mongolia will do the same. This principle could be applicable, to a lesser extent, to those inland states which seek to preserve their strict neutrality in international affairs. It is then possible that such countries as Switzerland and Austria, while sympathizing with their fellow inland states, will not exert the degree of influence that they otherwise could. As an aside, it is notable that there exists no military might of any consequence among the land-locked nations, and accordingly the coastal states presently feel no threat of hostile action. Of course, this may not always be so. As an example, Rhodesia could possibly turn into an immediate menace to any neighboring state. Eventually, so could Bolivia and Paraguay if necessity existed. However, since the possibility of military action to secure access to the sea seems remote, and there are no immediate fears, it is unlikely that this will play any part in the considerations of coastal nations.

All of the above factors tend to fragment the potential influence of a unified block of inland nations. It remains to be seen whether these considerations will, in fact, prevent meaningful gains for these countries. The Convention on Transit Trade of Land-locked Countries and the voting patterns in the United Nations General Assembly demonstrate at least a unification of interests by the inland nations. While it is likely that the Convention on Transit Trade will serve as the basis for many demands to be made at the 1973 Conference, the reluctance of coastal nations to sign the agreement lessens its international impact. Nevertheless, if the international areas of the ocean are to be preserved for the benefit of all mankind, it would seem preposterous to deny one fifth of the nations of the world the rights of equal enjoyment.

III. NON-LIVING OCEAN RESOURCES

Oceanic resources will undoubtedly influence international politics; if not in the immediate future, then in at least the forseeable.

The resources are both plentiful and in some instances relatively cheap to extract. The inland countries no doubt feel that they have a direct stake in the harvesting of these materials. Indeed, they have often expressed a desire to participate,[46] not only because of the direct economic impact these resources may have on the world market, but also because it is possible that they, especially the under-developed nations, could utilize the exploitation of these resources as a source of income. It should be noted that many of the interests of the land-locked countries, in this regard, are identical to the interests of under-developed countries as a whole. This is to say that all nations, whether they be land-locked or not, wish to take part in the sea bed exploitation. The land-locked nations, though, have to go one step further: they must demonstrate a right to participation based upon the fact of their existence and not upon the physical attributes of their territory.

Presently, with the exception of hydrocarbons, the exploitation of the sea bed resources is carried on at a very minor pace when compared with dry land exploitation. Mineral extraction from the sea has continued since 1852, but the lengths of the mines rarely exceeded four miles.[47] Today, to varying degrees, such resources as phosphorous compounds, manganese, titanium, zircon, diamonds, iron, gold, tin, sulfur, salt (sodium/chlorine), bromine, sand, gravel, and hydrocarbons are being taken from the ocean bed.[48] However, the total value of all of these extracts per year is not as high as the value of the sea's protein products.[49] By far the most important products, in terms of value, are the hydrocarbon resources. Approximately twenty percent of the world's supply of petroleum comes from the ocean bottom,[50] and with new discoveries compounded with the recognition that the sea offers nearly unlimited opportunities in this direction, there is every reason to believe that the significance of sea bed extraction will increase tremendously within the next few years.

Future oceanic exploitation can be expected to center around other minerals, besides those already mentioned. Nickel, copper, cobalt, zinc, and manganese can be forecast as among the first to be exploited; these are minerals that partly compose the much-ac-

46. *See, e.g.*, G.A. Res. 2750 C, *supra* note 4.
47. Garrett, *Issues in International Law Created by Scientific Development of the Ocean Floor*, 19 SOUTHWESTERN L. REV. 101 (1965).
48. Fye, Maxwell, Emery, Ketchum, *Ocean Science and Marine Resources*, in USES OF THE SEA 50-51 (ed. E. Gullion, for the American Assembly, 1968) (hereinafter cited as Fye).
49. *Id.*
50. Kaufman, *Seabed Technology*, 5 TEXAS INT'L L.F. 195 (1969).

claimed manganese nodules.[51] In addition, it is possible that profitable returns may be received from the development of marine sources of platinum and most heavy metals.[52] Regardless of the time in which the production of any of these minerals achieves a level that could produce significant effects on the international markets, it is mandatory that the land-locked nations act now in securing their rights. The very fact that our technology in marine resource development exists at such a state that production is feasible implies that belated attempts to secure oceanic resource rights will result, to a large extent, in failure. It is apparent that those countries which have invested large sums of money into the development of sea resources will not easily let go of the proceeds received. If the inland countries are to finalize the interests which they feel are due to them, they must do so at the 1973 United Nations Conference on Law of the Sea.

Economics

The United Nations has expressed the intent that the sea not only be used for peaceful purposes, but also that the development of marine resources be undertaken with all countries, whether developed or under-developed, coastal or land-locked, taking part.[53] However, no consensus exists as to what the actual impact of these resources will be. This information is especially important to the land-locked states because of the added expenses they must suffer on the open market due to overland transportation costs. Bolivia and Czechoslovakia had this in mind when they urged the General Assembly of the United Nations to take special measures so that all land-locked nations would be protected from adverse economic reactions.[54]

Early estimates of the return that could be expected from marine resource exploitation often approached magnificent sums.[55] This

51. *Id.*, Brooks, *Deep Sea Manganese Nodules: From Scientific Phenomenon To World Resource,* 8 NATURAL RESOURCE J. 401 (1968). *See generally* Mero, *Mineral Deposits in the Sea,* 1 NATURAL RESOURCE LAW 130 (1968).
52. *See* Fye, *supra* note 48.
53. *See Report of the Ad Hoc Committee to Study the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction,* U.N. Doc. A/7230 (1968).
54. 8 U.N. MONTHLY CHRON. (No. 1) 40 (1971).
55. *See* Pardo, *Who Will Control the Seabed,* 47 FOREIGN AFFAIRS (No. 1) 123-37 (1968).

unbridled enthusiasm has been somewhat cooled by the recognition of economic realities by the forecasters. However, it is obvious that many of the more developed countries are giving the exploitation potential of the ocean floor serious consideration. Where governments have been slow to act, private sectors have taken the initiative. Hughes Tool Company has announced that construction is already under way on a three hundred and twenty-four foot barge and a five hundred and sixty-five foot mining vessel to be used in the harvesting of manganese nodules.[56] The vessels are designed to be operational at depths from twelve thousand feet to approximately eighteen thousand feet under the surface of the ocean. This means the vessel has mining capabilities that extend far beyond the continental shelf and well into international waters. Note that as recently as 1966 the United States' under-sea mining operations were conducted at depths of merely one thousand feet.[57]

Other than the hydrocarbons, manganese nodules have evoked the most fascination from potential investors. It has been approximated that one ship could mine as many as four thousand tons of nodules in a day if it was operating within a rich field of the nodules.[58] The nodules, which rest upon the sea floor, can congregate in amounts as large as two pounds per square foot. As has previously been mentioned, the nodules contain several other minerals, in varying concentrations, along with the high content of manganese. Furthermore, there is some evidence to support the contention that these nodules are being manufactured on the ocean floor at a faster rate than we are using the materials on a yearly basis.[59] Although this natural manufacturing of the nodules could not replace the present concentrations that we can expect to find, it would still make the supply nearly inexhaustive at our present rate of consumption.

Predictions as to what the direct economic effects would be if mass exploitation were undertaken may be both misleading and inaccurate; nevertheless, such studies have been attempted. At

56. Los Angeles Times, Jan. 17, 1972, § 1 at 3, col. 4. *See generally* Auburn, *The International Seabed Area*, 20 INT'L & COMP. L.Q. 173-76 (1971).

57. REPORT OF THE COMMISSION ON MARINE SCIENCE, ENGINEERING AND RESOURCES, OUR NATION AND THE SEA: A PLAN FOR NATIONAL ACTION 134 (1969) (hereinafter cited as COMMISSION REPORT).

58. F. Christy, Alternative Regimes for the Minerals on the Sea Floor 3-5 (Manuscript submitted to American Bar Association, National Institute on Marine Resources, June 8, 1967). *See* Mero, *A Legal Regime for Deepsea Mining*, 7 SAN DIEGO L. REV. 488, 498-99 (1970); J. MERO, THE MINERAL RESOURCES OF THE SEA (1965).

59. Fye, *supra* note 48 at 37.

present levels of consumption and with the full utilization of present technology behind a mining effort, it has been calculated that on the world market manganese would drop as much as fifty percent in price. Likewise, cobalt prices would be reduced as much as thirty percent, and nickel about five percent.[60] Zinc, copper and lead can also be expected to suffer a reciprocal drop in price, although perhaps not as accentuated.

If the world prices did fall in accordance with the above estimations, the consequences could be drastic to many inland states. Even if free access to the sea tempted a land-locked country to compete in the exploitation of these minerals, the costs would undoubtedly be prohibitive and the advantages minimal.[61] Necessity dictates that inland countries who rely primarily on the export of the minerals mentioned for their income seek strong controls and agreements that would guarantee international cooperation. If this cooperation is not forthcoming, Uganda can expect drastic effects on the sale of its nickel and copper. Bolivia's lead, cobalt, copper and zinc exports would likely be subject to the same fate.[62] The inland countries that could face such a situation are, of course, numerous. The effect could be even more pronounced where inland countries (and all developing countries) have resources that are as yet not at a competitive state of production. Foreseeably, much money would be invested in marine resources rather than in these countries where many investments are tempered by political overtones and factors of this nature. The inland countries would be especially hard hit because of the reluctance of investors to tackle the complex transportation problems associated with land-locked states.

Land-locked states face a totally different problem when hydrocarbons are considered. Controls there would be sought, not to control the market so that prices might be kept up, but rather so that prices may be kept down. Not one of the inland states is a petroleum producer of any consequence, although a very small mi-

60. Christy, Alternative Regimes, *supra* note 58, at 3-5. *See* Mero, *A Legal Regime, supra* note 58, at 496-97; Schaefer, *Prospective Rates of Development, supra* note 2, at 71-98; Brooks, *Deep Sea Manganese Nodules, supra* note 51, at 407-12.

61. *See* Christy, Alternative Regimes, *supra* note 58.

62. See 4 MINERALS YEARBOOK (U.S. Dep't of the Int., 1968) for comprehensive analyses of international mineral production on a state by state basis.

nority do have fledgling industries. But again, even these young industries will probably contribute very little to world trade. For this reason, it is probably in the interest of the majority of inland states to insure themselves of either a continuing source of petroleum at a low price or international controls through which they can profit, that is some sort of income return from those resources outside of national jurisdictions. Either method would accomplish the same end.

The development of oceanic hydrocarbons will probably be the hardest problem to bring under international control. Not only is the potential market extensive, but nationalism will undoubtedly play a very important part in any international debate on the subject. Massive oil discoveries beyond the continental shelf, yet clearly within a nation's interests, will serve to complicate the matter even further. The recent discovery off Nova Scotia, estimated to extend all the way from Sable Island to the Carolinas in the United States, is a case in point.[63] It seems very unlikely that the United States and Canada will allow foreign exploitation of any kind upon these resources. The inland nations, in the majority, here have interests that diverge from many of the shelf-locked and under-developed states. The primary interest of these countries is to see that the hydrocarbon resources are actually developed at the very slowest pace. Many of the shelf-locked and under-developed states are petroleum producers and hence seek to retain their income sources.[64] Accommodation through international agreements must take cognizance of all the interests involved, yet it is this very diversity in national interests that will weaken the probability that specific desires are included.

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63. TIME, Jan. 3, 1972, at 62. As to the potentiality of nationalistic assertions towards hydrocarbons beyond the continental shelf *see, e.g., Recent Developments in Law of the Seas: A Synopsis,* 7 SAN DIEGO L. REV. 637-38 (1970). *See also* Gaskell, *Oil Interests in the Deep-Seabed,* in THE LAW OF THE SEA: NATIONAL POLICY RECOMMENDATIONS 95 (Proceedings of the Fourth Annual Conference of the Law of the Sea Institute, 1969); Finlay, *The Draft United Nations Convention on the International Seabed Area: The American Petroleum Institute Position,* 4 NATURAL RESOURCES LAW. 73 (1971). *Compare* Declaration of Montevideo, 9 INT'L LEGAL MATERIALS 1081 (1970) (Latin American statement in respect to the seas adjacent to their coasts) *with* the Convention on the Continental Shelf [1964] pt. 1, U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311. *Done* at Geneva April 29, 1958; *entered into force* June 10, 1964. *See generally* U.N. FOOD AND AGRICULTURAL ORGANIZATION, LIMITS AND STATUS OF THE TERRITORIAL SEA, EXCLUSIVE FISHING ZONES, FISHERY CONSERVATION ZONES AND THE CONTINENTAL SHELF (Circular No. 127, 1971); 9 INT'L LEGAL MATERIALS 1255, 1258-71 (1971) (National claims to sea bed resources).

64. Newton, *Seabed Resources: The Problem of Adolescence,* 8 SAN DIEGO L. REV. 551, 569 (1971) (hereinafter cited as Newton).

Ramifications

If an international regime of the seas is to be a governing body with actual authority, it is obvious that this authority must be based upon power vested by the various nations. Of the nations that make up the United Nations General Assembly, by far the majority are under-developed, and therefore lack the capability to exploit the seas to any large degree. The initial investment in a full-scale oceanic development program will undoubtedly involve large quantities of money, and further, technological accomplishments beyond the abilities of any small or under-developed nation.[65] Foreseeably, the results of unchecked mass exploitaton would then establish a perfect example of the rich getting richer and the poor poorer. To remedy the inequities of rich nations placing their money into marine resource development rather than in the coffers of the under-developed nations, several novel solutions have been proposed.

The idea that has attracted the most attention would establish a system of administration whereby exploitation licenses would be issued for specific areas of the ocean floor. Income received from the issuance would then enter a fund, with distribution directed at those states which have the greatest economic need.[66] To the inland nations, such a method of administration has faults if stringent and practical controls are not adopted. Being deprived of a market for their earth resources, the incomes received would, at the most, compensate for the losses. Extrapolated in the future, it would mean that many of their earth resources would never be developed at all, depriving them of being able to establish a self-sufficient economy. Furthermore, their coastal neighbors would

65. COMMISSION REPORT, *supra* note 57, at 135. *See, e.g., Report of the Secretary General of the United Nations Economic and Social Council on the Resources of the Sea* at 38-55, E/4449/Add.1 (1968) for an evaluation of the technological and scientific prerequisites to sea bed exploration for minerals and ores.

66. *See generally* THE LAW OF THE SEA: NATIONAL POLICY RECOMMENDATIONS 2-187 (Proceedings of the Fourth Annual Conference of the Law of the Sea Institute, 1969); Knight, *The Draft United Nations Convention on the International Seabed Area: Background and Some Preliminary Thoughts*, 8 SAN DIEGO L. REV. 459 (1971); Newton, *Seabed Resources, supra* note 64, at 551. *See also* A. HOLLICK, MARINE POLICY, LAW, AND ECONOMICS: THE 1960's (an annotated bibliography released through the Law of the Sea Institute, 1970).

grow economically at an inproportionate rate due to the added incomes they would receive from the exploitation of their marine and shelf resources. Besides the political overtones, that is, a landlocked nation situated next to a richer and developing nation, it is obvious that the inland country would eventually become dependent not only on neighboring coastal nations, but also on the developed nations who could afford sea bed resource development. It would be an understatement to say that this would be quite unattractive to many nations so situated. Many of the younger nations are now asserting their new-found nationalism; to these states, such a form of neo-colonialism would be untenable. If such a regime were to succeed, it would have to be based on the premise that marine exploitation would be a secondary function. Its primary purpose would be to control markets for the benefit of the inland countries. Of course, economic restructuring would eliminate many of the problems mentioned. But the fact remains that the majority of inland countries are now operating at subsistence levels and therefore, for all practical purposes, economic realignment is impossible.[67] It is inconceivable that such countries as Chad or Zambia could become self-sufficient solely by processed-goods production in the manner Switzerland has.

A proposal suggested by W. Frank Newton deserves some merit. Mr. Newton considers the possibility of dividing up the *international* areas of the ocean floor between all countries.[68] He would allocate certain areas for developing countries, and others for developed countries and thereby allow the lesser powers to have control over their own economic interests. The exploiters would have to deal directly with the developing country, and could only exploit the areas through licenses. He further suggests that a system could be set up whereby a more developed nation would have proportionately less licenses to distribute than a lesser developed nation. The number of licenses that a developed nation then could issue would go up in accordance to the amounts issued by the developing states. To an inland state, this would very likely be the best of all possible methods of marine resource distribution. Their stake in oceanic resources would be real and not illusory. As a body, they would have control over the development of their own resources and rather than continually be fighting the market im-

67. *See, e.g.,* Samir *Development and Structural Change: The African Experience 1950-1970,* 24 J. INT'L AFFAIRS 203 (1970); *Processes and Problems of Industrialization in Under-developed Countries,* U.N. Doc. E/2670/ST (1955). Georgulas, *Operational Problems in African Rural Development Planning,* 8 DEVELOPMENT DIGEST (No. 2) 61 (1971).

68. Newton, *supra* note 61 at 568.

pact of sea resources, they would actually be sharing in the proceeds. Although such a plan would be desirable to most inland states, it is unlikely that the developed states would endorse the method of distribution. Special covenants in international agreements would have to be drawn up to prevent oceanic nationalism. It would not be too far-fetched to imagine states, especially the coastal states, claiming ownership of hydrocarbon facilities or revoking licenses. Politically, Mr. Newton's plan can be expected to meet stiff opposition if it is presented at all. The fear of nationalistic assertions and the fact that the developed nations do not act through wholly altruistic motives will likely defeat an otherwise brilliant idea.

Assuming that some feasible plan can be constructed which would embody the necessary income and market controls, the land-locked countries will nevertheless consider their representation on any international regime a crucial objective. Proper controls within an instrument of international significance would be quite valueless if they were not accompanied by some means of enforcement and administration, whereby the interests of the land-locked countries could be effectively expressed. As can be expected, the timeliness of the United Nations Conference on the Law of the Seas has evoked a number of proposals, both national and private, that seek to equitably distribute authority among the various interest groups. The proposals deserve some consideration, for it is upon these proposals that a compromise concerning the establishment of an international regime will eventually be based.

E. Brown, a noted commentator in the area of ocean resources and politics, has produced an illustrative model that he feels embodies the principles of equitable representation.[69] In his model, Mr. Brown draws up provisions for the establishment of two bodies. One body would determine the actual appropriation of funds received from the exploitation of the seas, that is, the income receiving arrangements. The other body would determine how the funds are to be allocated. In the first body, or the Governing Body, forty-three sectors would be represented, and out of these forty-three sec-

69. Brown, *Our Nation and the Sea: A Comment on the Proposed Legal-Political Framework for the Development of Submarine Mineral Resources* in THE LAW OF THE SEA: NATIONAL POLICY RECOMMENDATIONS 2, 45-49 (Proceedings of the Fourth Annual Conference of the Law of the Sea Institute, 1969).

tors the land-locked states would be appropriated one seat. In the second body, the Fund Governing Body, the land-locked and shelf-locked states would receive one seat out of a possible thirty-seven. The remainder in both instances would go to technologically advanced and developing states. Decisions would be made by majority vote for both bodies. There are some readily observable criticisms in Mr. Brown's model. (It is only fair to note that the model is in no way intended to solve all ramifications or complexities that could arise; its purpose, although it is well-researched and supported, is speculative).[70] Of primary importance to the land-locked states is the model's propensity to group them with shelf-locked countries. Although there is no doubt that in many instances their interests will be identical, there are also some cases in which conflict can arise. This is especially evident in the Fund Governing Body where Mr. Brown apportions the authority in such a manner that it appears that the land-locked states will share common desires with shelf-locked states. Many of the Middle-East oil producing countries are shelf-locked and will therefore seek to dissuade high seas petroleum investment. On the other hand, most land-locked countries have no vested interest in land-based hydrocarbons, and will therefore seek to increase petroleum production so that they might share in the receipts. Mineral resource development will produce an opposite confrontation in many instances.

Ambassador Pardo seems more aware of the problems and conflicts that must be faced by the land-locked countries. He would give them, in his model, twenty percent of the total vote.[71] This would approximate the voting power that these countries hold in the United Nations General Assembly, and therefore increase the likelihood of passage of an international regime if passage were based upon unconditional terms. This agreement would surely draw support from the majority of inland countries since their vote would be one of substance, and not a mere token. Furthermore, in Ambassador Pardo's simple scheme, the technologically developed nations would receive forty percent of the votes, with the remainder going to the developing nations. This would indicate that where conflict arose between any two groups, the interests of the inland states could be well served because an alliance with these states would involve a substantial number of votes. Beneficiaries of this tactic would be primarily the African and Asian land-locked states, who have many interests in common.

70. *Id.* at 47, n.133.

71. Pardo, *Commentary*, in THE LAW OF THE SEA: THE UNITED NATIONS AND OCEAN MANAGEMENT 23, 28 (Proceedings of the Fifth Annual Conference of the Law of the Sea Institute, 1970).

The most comprehensive proposal to date appears to be the United States "Draft United Nations Convention on the International Seabed Area."[72] The United States proposal develops international control around two governing bodies: the Assembly and the Council. The Assembly would be composed of all contracting parties to the Convention.[73] Its authority would go to the procedures to be followed by the regime and to making recommendations as to policy. The Council would be the real source of authority in the United States proposal. Membership would be limited to twenty-four parties, of which six would be the most industrially advanced states.[74] The remaining eighteen seats would be filled by representatives from at least twelve developing states and two seats by representatives from land-locked or shelf-locked states.[75]

The United States proposal, unlike the two previously mentioned, does not limit the representation to only two seats. It rather leaves open the possibility that the Council representation may have several land-locked countries, providing only that a minimum of two members must be from land-locked or shelf-locked states. In this regard, the United States proposal will very likely appear attractive to the inland countries. The provisions allow the land-locked states to expand their political base if events are such that a common problem among these states can be solved by unification.

The proposals mentioned are, in varying degrees, representative of all the international regime formulations that will be given serious consideration in 1973.[76] It should be noted that the land-locked and shelf-locked countries have drawn up a proposal that would divide the authority of an international regime equally between themselves and the coastal states. The proposal is obviously self-serving and deserves little consideration. It is quite obvious that the coastal states would reject such a total annihilation of their au-

72. *Draft United Nations Convention on the International Seabed Area, U.N. Doc. No. AC/138/25;* 9 INT'L LEGAL MATERIAL 1046 (1970). *See* Knight, *The Draft United Nations Convention on the International Seabed Area, supra* note 66.

73. Draft United Nations Convention on the International Seabed Area, *supra* note 72, at Art. 34.

74. *Id.*, Art. 36 and App. E.

75. *Id.*, Art. 36.

76. *See* Sohn, *The Council of an International Sea-bed Authority,* 9 SAN DIEGO L. REV. 404 (1972), for a detailed discussion of international regime proposals.

thority.[77] While all formulas seem to recognize the necessity of representation by inland states, they differ as to what actual authority will be allocated among these states. The paramount objective of these nations in 1973 will be the maximization of their influence within any administrative system.

In this regard, it is important to note that, whether the sea bed is eventually controlled directly by a United Nations' administered board, or by a system of ocean floor allocation, the license fees or royalties cannot be so high as to dissuade investment. If fees are set at a rate incommensurable with profitable investment, it is apparent that the countries capable of marine resource exploitation will merely ignore any international covenants, leaving the inland and developing states with a white elephant.[78] They will, instead, concentrate their technology on the development of resources within their territorial waters. Results of this situation might not be felt for years, as several of the developed states do not have extensive resources on their shores; but it is safe to assume that technological advances will make even these resources extractable. With the several developed nations of the world working towards the exploitation of minerals, independently of any international controls, the other countries will eventually not only lose their markets for earth resources, but also the technological training necessary for marine resource development. To remedy this, the land-locked states must retain some control over sea floor development. If not received, they can expect their interests to be secondary to the interests of all other nations. Also, policing exploitation is of great concern to the land-locked and shelf-locked nations. Since these nations cannot profit in any manner by the abrogation of the international law of the seas, it is of primary importance to them to see that others also do not. For this reason those laws that will pertain to policing exploitation in international waters must be carefully drawn up, with due consideration given to the practicalities of enforcement. While the consequences that these minerals will have

77. *Preliminary Working-Papers Concerning Matters to be Regulated in an International Sea-Bed Convention* (Afghanistan, Austria, Belgium, Hungary, Nepal, Netherlands, and Singapore), U.N. Doc. A/AC.1381/55; 10 INT'L LEGAL MATERIALS 1011 (1971). *Compare* Preliminary Working Papers *with* Letter from Ministry of Foreign Affairs, Nepal, dated March 6, 1956, U.N. Doc. A/CN.4/99 Add.6; 2 Y.B. INT'L L. COMM'N § 16 at 62 (1956). As to the initial formulation of the 1958 Convention on the High Seas, *supra* note 26, the letter stated in part: "In view of her geographical situation as a landlocked country, Nepal has very little concern with the [Provisional Articles Concerning the Regime of the High Seas]."

78. *See, e.g.*, Bernfeld, *Developing the Resources of the Sea: Security of Investment*, 1 NATURAL RESOURCE LAW 82 (1968); *see also* Gaskell, *Oil Interests in the Deep-Seabed*, *supra* note 63.

on the international market may seem dubious now, there is no doubt that in the near future, when exploitation is conducted on a massive scale, that policing arrangements may make the difference between meaningful and wholly inadequate international law.

Whatever the plan adopted, if some settlement is not arrived at soon the land-locked states can expect to take a backseat in the development of marine resources for many years to come. Their interests would be far better served by having an international administration that suffers because of weakness than to be faced with the prospects of having no body to which they can turn at all. Given an authority with at least potential power, the substantial votes of the land-locked countries could eventually be exercised to obtain a considerable amount of leverage in the United Nations, and these states could thereby obtain some satisfaction in the future. Furthermore, as the mineral extraction of the sea becomes more substantial, it can be expected that the vast majority of smaller nations in the world will demand that any international regime retain more authority for itself.

IV. CONCLUSION

The land-locked nations' primary concern in 1973 will be the implementation of an international regime that will adequately represent their special interests. Since it is commonly accepted that those waters outside national territorial jurisdiction are reserved for the benefit of mankind, the real question will revolve around the quantity of representation and not the fact of representation itself. This is based on the assumption that a meaningful agreement is reached at all.

In reference to the establishment of an international regime, it has been stated that "[t]he landlocked states would seem to be the least difficult to please, be they developed or developing."[79] This attitude not only seems prevalent among writers, but it seems to be based on a great deal of common sense. In consideration of the past accomplishments of those inland countries which sought representation in this area, it is logical to assume that those who have had so little before will now settle for even token participation. Furthermore, it is surely arguable that the interests of the land-

79. Brown, *Our Nation and the Sea, supra* note 69, at 31.

locked countries (and the shelf-locked) are less than the coastal states, developed or not, because of the direct nature of the littoral states' interests. This is to say that the land-locked states will have a lesser concern for those agreements and covenants that pertain to shipping, international straits and conduct on the high seas. The interests of the land-locked states is less, not because they *may* not participate,[80] but because many of these states *will* not participate. Obviously, very few of the inland states can afford the costs associated with many marine enterprises. Geo-political realities and prerequisites may prohibit the complete utilization of oceanic rights.[81] The present value of inland representation, for most countries, must be measured as an investment in the future rather than as an immediate boon.

However, the above argument centers on advantages that can be expected; it does not consider the apparent harmful results that sea bed exploitation can promulgate. It is possible economic injury which has aroused the recent clamor by the developing nations, especially the shelf-locked and land-locked. This view was aptly expressed by Arvid Pardo, Ambassador of Malta to the United States, when he stated:

> It is in vain, however, to hope that such a regime can receive wide support among the poorer countries without provisions effectively protecting some of their most vital interests; of special importance among these is equitable participation in the economic benefits that can be derived from the exploitation of resources of the seabed, effective protection of land-locked sources of minerals against destructive competition, and easier access to the results of scientific research, these requirements of many of the poorer countries of the world can only be effectively implemented through the establishment of appropriate international institutional machinery with powers to supervise and to some extent regulate the activities of States with regard to the seabed beyond national jurisdiction. If such machinery does not form part of an international regime, many countries would prefer to extend their national jurisdiction as circumstances may suggest, and then to exploit the resources of the area claimed by hiring the necessary technology.[82]

Of course, the land-locked countries have no national jurisdiction to extend, but they do have a significant block of votes in the

80. *See* Convention on the High Seas, *supra* note 29, at Art. 2. *But see* G. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 137-38 (5th ed. 1967).

81. Communist versus non-communist situations present the most evident examples of geo-political realities preventing a country from exercising oceanic rights with complete freedom. Other considerations by an inland country in this respect may be more subtle. Hence a country seeking to preserve its neutrality may find that flying its flag on the open sea, or even within territorial waters of a third country, offers an opportunity to potential aggressors.

82. Pardo, *Commentary, supra* note 71, at 27.

United Nations General Assembly. Mr. Pardo's statement very adequately describes the fears of the shelf-locked and land-locked nations, and it can be assumed that a majority of the inland countries will exercise their votes in a manner that will ensure representation commensurate with their interests. The significance of the inland states' United Nations voting power has been recognized in a variety of ways. Almost all proposals for international regimes, to some degree, include a number of "seats" for inland representation. This is an optimistic sign, but it still remains to be seen whether the representation can be combined with a relevant degree of authority. The establishment of a meaningful international convention in 1973 is by no means assured.

Any convention will, of course, face some political opposition. Russia has, in the past, shown very little incentive to formulate an international regime.[83] However, in recent months, even this opposition has been modified.[84] Nevertheless, the fact that the land-locked states are now taking a stronger stance and that typical proposals for international regimes recognize their interests, indicates that any international authority would probably include these states among their membership.

All of the numerous problems that will arise have not been discussed. The writer sought here, only to show what common interests these countries do have, and may have some time in the future. There are many examples of political conflicts that could prevent any specific inland nation from either expressing its position or exercising rights. Economic necessity or agreement may prevent a land-locked country from opposing a neighbor. Furthermore, while the land-locked nations may have common interests, political animosity may prevent any unification in this area.

83. *See* Butler, *Some Recent Developments in Soviet Maritime Law*, in THE LAW OF THE SEA: THE UNITED NATIONS AND OCEAN MANAGEMENT 375 (Proceedings of the Fifth Annual Conference of the Law of the Sea Institute, 1970). *See also* Newcombe, Ross, Newcomb, *United Nations Voting Patterns*, 24 INT'L ORGANIZATION 100 (1970); W. BUTLER, THE SOVIET UNION AND THE LAW OF THE SEA (1970), *reviewed* in 13 HARV. INT'L L.J. 180 (1970). *See generally* Dole & Stang, *Ocean Politics at the United Nations*, 50 ORE. L. REV. 378 (1971); Friedham & Kadane, *Quantitative Content Analysis of the United Nations Seabed Debate: Methodology and a Continental Shelf Case Study*, 24 INT'L ORGANIZATION 479 (1970).

84. *Provisional Draft Articles of a Treaty on the Use of the Sea-bed for Peaceful Purposes* (U.S.S.R.), U.N. Doc. A/AC.138/43; 10 INT'L LEGAL MATERIALS 994 (1971).

There are many topics that could be discussed, such as the extent of the international area, practical methods of participation by the land-locked countries, and the practical ramifications of exercising rights under an international regime in which all the countries of the world are not parties or represented. The inland states must take inventory of their problems; the United Nations must make extensive market analyses to determine economic impact. The time is quickly approaching when decisions may come too late. It is apparent that our land-based resources are diminishing,[85] yet many of the developing countries rely on the scarcity of goods to drive the price up—and hence their income. These problems will have to be resolved, and it is just possible that under the new Secretary-General of the United Nations, Kurt Waldheim, a man with a reputation for aggressiveness, the 1973 Conference on the seas may establish a regime in which all interests are adequately represented.

PATRICK CHILDS

85. *See* J. FORESTER, WORLD DYNAMICS (1971) *and* TIME, Jan. 24, 1972, at 32.